

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
)
 v.) Criminal No. 07-10380-PBS
)
)
JOSHUA RICHARD,)
JASON WAYLEIN,)
JOSEPH WEEDEN and)
JOHN MCNUTT,)
 Defendants.)

PRELIMINARY ORDER OF FORFEITURE (AMMUNITION)

SARIS, D.J.,

WHEREAS, on November 15, 2007, a federal grand jury sitting in the District of Massachusetts returned a thirteen-count Indictment charging defendants Joshua Richard, John McNutt, Joseph Weeden and Jason Waylein (the "Defendants") each with one or more of the following violations: Conspiracy to Distribute Oxycodone, in violation of 21 U.S.C. § 846 (Count One), Possession of Oxycodone with Intent to Distribute and Distribution of Oxycodone, in violation of 21 U.S.C. § 841(a)(1) (Counts Two through Eight), Conspiracy to Possess a Firearm in Furtherance of a Drug Trafficking Crime, in violation of 18 U.S.C. § 371 (Count Nine), Possession of a Firearm in Furtherance of a Drug Trafficking Crime, in violation of 18 U.S.C. § 924(c)(1) (Count Ten), and Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1) (Counts Eleven through Thirteen);

WHEREAS, the Forfeiture Allegations of the Indictment sought the forfeiture, upon conviction of any offense alleged in Counts

Nine through Thirteen of the Indictment, of all firearms and ammunition involved in the commission of the offense, pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), including without limitation the following:

- (a) a semi-automatic Norinco SKS 7.62x39 rifle, serial number 1-1801815G;
- (b) a Mossberg 12 gauge shotgun, serial number P413553;
- (c) 68 rounds of Federal 12 gauge shotgun shells;
- (d) one .270 caliber round, one 7.62 caliber round, five .223 caliber rounds, two .45 caliber rounds, one 9mm round, and two .32 caliber rounds;
- (e) 100 rounds of .22 caliber ammunition; and
- (f) 35 rounds of CBC .32 caliber ammunition;

WHEREAS, on October 30, 2008, Joshua Richard pled guilty to Counts One through Twelve of the Indictment, Jason Waylein pled guilty to Count One of the Indictment, and John McNutt pled guilty to Count Nine of the Indictment, and on November 24, 2008, Joseph Weeden pled guilty to Count Thirteen of the Indictment, thereby admitting that the ammunition described in subparagraphs (c) through (f) above (the "Ammunition") is subject to forfeiture;

WHEREAS, as a result of the Defendants' guilty pleas, and pursuant to 21 U.S.C. § 853(a), as incorporated in 28 U.S.C. §

2461(c), and Rule 32.2 of the Federal Rules of Criminal Procedure, the United States now is entitled to a Preliminary Order of Forfeiture against the Ammunition.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED, and DECREED:

1. The Court finds, pursuant to Rule 32.2(b)(1) of the Federal Rules of Criminal Procedure, and based upon the Defendants' guilty pleas, that the government has established the requisite nexus between the Ammunition and the offenses to which the Defendants pleaded guilty. Accordingly, the Ammunition is hereby forfeited to the United States of America for disposition pursuant to 21 U.S.C. § 853, as incorporated in 28 U.S.C. § 2461(c).

2. The Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") shall seize and hold the Ammunition in its secure custody and control.

3. Pursuant to 21 U.S.C. § 853(n)(1), as incorporated by 28 U.S.C. § 2461(c), the United States shall also publish, for thirty (30) consecutive calendar days, notice of this Order and of the United States' intent to dispose of the Ammunition in such manner as the Attorney General may direct on the government website www.forfeiture.gov.

4. Pursuant to 21 U.S.C. § 853(n), the United States shall give, to the extent practicable, direct written notice to any person known to have alleged an interest in the Ammunition to be

forfeited.

5. Pursuant to 21 U.S.C. § 853(n) (2) and (3), the notice referred to above shall state: (a) that any person, other than the Defendants, asserting a legal interest in the Ammunition, shall, within (60) days after the first day of publication on the government forfeiture website or within thirty (30) days after receipt of actual notice, whichever is earlier, file a petition with the United States District Court in Boston, Massachusetts, requesting a hearing to adjudicate the validity of his or her interest in the Ammunition; and (b) that the petition shall be signed by the petitioner under the penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the Ammunition, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the Ammunition, and additional facts supporting the petitioner's claim, and the relief sought.

6. Pursuant to 21 U.S.C. § 853(n) (7), following the Court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in 21 U.S.C. § 853(n) (2) for the filing of such petitions, the United States of America shall have clear title to the Ammunition.

7. Upon adjudication of all third party interests, this Court will enter a Final Order of Forfeiture pursuant to 21 U.S.C. § 853 and Rule 32.2 of the Federal Rules of Criminal Procedure, in which all interests will be addressed.

8. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, this Preliminary Order of Forfeiture will become final as to the Defendants at the time of their sentencing, will be part of the Defendants' criminal sentences, and will be included in the criminal judgment entered by this Court against them.


PATTI B. SARIS
United States District Judge

Date: 2/9/09